E COPY

Office - Supreme Co
FILE
FEB 7 19
HAROLD B. WILLE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

ADDITIONAL MEMORANDUM OF RESPONDENT.

CHAS. D. LONG and
MILTON YAWITZ,
Counsel for Respondent.

RASSIEUR, LONG & YAWITZ and
ROBERT H. BATTS,
418 Olive Street,
St. Louis 2, Missouri,
Of Counsel.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 1-4477.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

ADDITIONAL MEMORANDUM OF RESPONDENT.

This Memorandum is presented in response to this Court's request made at the time of oral argument:

The Constitution of the State of Missouri adopted in 1945 provides in Article V, Section 3 thereof as follows:

"**Section 3. Jurisdiction of the supreme court.**— The supreme court shall have exclusive appellate jurisdiction in all cases involving the construction of

the Constitution of the United States or of this state, . . . "

Under the foregoing provision the Supreme Court has exclusive jurisdiction of all cases involving federal questions.

Article V, Section 11, of the Constitution of Missouri provides:

> "**Section 11. Venue of appeals—transfer to court having jurisdiction.**—In all proceedings reviewable on appeal by the supreme court or a court of appeals, appeals shall go direct to the court having jurisdiction thereof, but want of jurisdiction shall not be ground for dismissal, and the proceeding shall be transferred to the appellate court having jurisdiction thereof."

Under the foregoing provision, cases are automatically channeled to to the proper court.

Again under constitutional provisions the right of appeal is made absolute.

> "Article 5, **Section 22. Judicial review of action of administrative agencies—scope of review.**—All final decisions, findings, rules and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasijudicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record."

Article V, Section 5 of the Constitution of Missouri lodges in the Supreme Court of Missouri the power to establish rules of practice and procedure for all courts of the state:

"Section 5. **Rules of practice and procedure—duty of supreme court—power of legislature.**—The supreme court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose."

Under Article V, Section 10 of the Missouri Constitution, cases may be transferred from the Court of Appeals to the Supreme Court of Missouri, where (1) there is a dissent from the majority opinion and the dissenting member of the court certifies that he deems the opinion to be contrary to previous decisions of the supreme court or in conflict with any previous opinion of any of the courts of appeal, or (2) by order either (a) of the Court of Appeals, or (b) of the Supreme Court itself because of general interest or importance of the question involved in the case:

"**Section 10. Transfer of causes from courts of appeals to supreme court—scope of review.**—Cases pending in any court of appeals shall be transferred to the supreme court when any member of the court of appeals or any division thereof dissents from the majority opinion and certifies that he deems said opinion to be contrary to any previous decision of the supreme court or of any of the courts of appeals, and may, after opinion, be transferred to the supreme court by order of either the court of appeals or the supreme court because of the general interest or importance of a question involved in the case, or for the purpose of re-examining the existing law, or pursuant to supreme court rule. The supreme court may finally determine all causes coming to it from any court of

appeals, whether by certification, transfer or certiorari, the same as on original appeal."

Under the foregoing constitutional provisions, the Supreme Court adopted Rule 2.06, which rule was adopted and in force long before the filing of this cause. This rule reads in part as follows:

"Rulez of the Supreme Court—2.06:

"No case shall be transferred by order of the Supreme Court from a Court of Appeals unless a motion for rehearing has been filed and overruled in the Court of Appeals, and unless a motion for such transfer has been made to the Court of Appeals within the time for filing a motion for rehearing and denied by it, and unless an application for transfer is filed in the Supreme Court within 30 days after the denial of the motion for rehearing and motion for transfer by the Court of Appeals . . . ."

"The application . . . shall set out concisely the question of general interest or importance involved in the case, or why re-examination of the existing law is required, or wherein the Court of Appeals has failed or refused to follow the last controlling decision of the Supreme Court, concisely setting out the issue presented to the Court of Appeals and showing wherein and in what manner the alleged conflicting ruling arose and stating the citation of the controlling decision. The application may allege more than one ground, either concurrently or in the alternative. No application will be granted unless it shows that a question of general interest and importance is presented which has not previously been decided by the Supreme Court, or shows reasonable grounds for holding the existing law to be erroneous, or shows that the Court of Appeals has failed or refused to follow the last controlling decision of the Supreme Court . . . "

As pointed out in the original brief of Respondent (point 3, pages 21 and 22 of Respondent's Brief), it has long been judicially determined by the Supreme Court of Missouri that any constitutional question must not only be raised at the earliest possible opportunity but must be preserved throughout all phases of subsequent proceedings. The application for transfer filed in the Supreme Court preserves no constitutional question whatsoever, but on the contrary, based the application on the alleged conflict between the present case and **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 115, 193 S. W. 2d 919, 165 A. L. R. 785.

No question involving the federal constitution was presented to the Supreme Court of Missouri by the petitioner in this case.

Respectfully submitted,

CHAS. D. LONG and
MILTON YAWITZ,
Counsel for Respondent.

RASSIEUR, LONG & YAWITZ and
ROBERT H. BATTS,
418 Olive Street,
St. Louis 2, Missouri,
Of Counsel.